



File Code: 2350

Date: April 1, 2009

Wendy Wyels
Chief
Compliance and Enforcement Section
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive # 200
Rancho Cordova,, CA 95670-6114

Dear Ms Wyels,

Thank you for the opportunity to provide comment to the Central Valley Regional Water Quality Control Board's (Water Board) January 23, 2009, draft Cleanup and Abatement Order (CAO) to El Dorado County (County) regarding the County's management of the Rubicon Trail. Although, as noted in the draft CAO, portions of the Rubicon Trail are located within the boundaries of the Eldorado National Forest, the County has asserted management responsibility for the Rubicon Trail as a public road on both National Forest System and private lands. For a portion of the Rubicon Trail located on National Forest System lands, the County has asserted management authority and responsibility under RS 2477 since 1989. For the remaining portion of the Rubicon Trail located on National Forest System lands, the County has an easement from the Forest Service, with associated management responsibilities.

The draft CAO describes the Rubicon Trail on page 1, Number 1. The Forest Service recommends that the Water Board provide a more specific and detailed definition for the Rubicon Trail. There are multiple routes that the various members of the public commonly refer to differently as the Rubicon Trail. In addition, in its March 25, 2009, comment letter (pages 3-4), the County specifically describes, for its management purposes, the Rubicon Trail. It is important that the final CAO clearly identify and describe the portions of the Rubicon Trail that are within the scope of the CAO. For example, the draft CAO references on p 7, No 7, the need for a bridge at Gerle Creek, but its location in terms of the scope of the draft CAO set forth in paragraph Number 1, is unclear. The proposed bridge at Gerle Creek is located within the segment of the Wentworth Springs Road that is identified by the County as part of its Rubicon Trail responsibilities. Another example of the need for clarification is a trail segment extending from the dam at Loon Lake northward to the intersection of the original trail near the Ellis Creek crossing (this trail segment is referred to as the Ellis Tie Trail). The County received an easement from the Forest Service for this segment of the Rubicon Trail and has management responsibilities associated with that easement.

The Forest Service recommends clarification as to whether the draft CAO is intended to be limited to the Rubicon Trail or include related trail segments that connect with, or intersect, with the Rubicon Trail. These connected routes are used by OHV users of varying skills, such as in the vicinity of the Little Sluice near Spider Lake. The scope of the final CAO should be clear as to whether it includes any routes or trails that connect with, or intersect, the Rubicon Trail, and if so, which ones and their specific location. We recommend that all related trail segments be



included in a CAO, so that the management is consistent and coordinated across the entire Rubicon Trail.

The Forest Service shares the Water Board's concerns regarding effects identified in the Water Board's assessment report. Some of the points of sediment delivery identified in the Water Board's assessment report have the potential to adversely affect adjacent National Forest System lands.

On December 20, 2007, the Forest Service provided comments to El Dorado County in response to the draft Rubicon Trail Master Plan and Environmental Impact Report. In those comments, the Forest Service identified that Alternative A was the preferred alternative, and concurred with the County's assessment that this alternative has less potential for environmental impacts. In particular, Alternative A, if implemented, would call for an operations and maintenance (O&M) plan to be developed for the trail, a permit system and monitoring to determine if a quota is needed, identification of camping locations and maintenance needed to manage those camping areas, sanitation needs (including imposing the use of pack in/pack out human waste containers), design and construction of important infrastructure such as bridges across Gerle and Ellis Creeks, and, if necessary, seasonal or temporary closures.

The Rubicon Trail crosses both National Forest System land and private lands. As for that portion crossing NFS lands within the County's asserted right-of-way, the Forest and the County must have a common understanding of the rights and responsibilities concerning the Rubicon Trail prior to implementation of any elements of the CAO. There are a variety of mechanisms available to the County to accomplish this, in cooperation with the Forest Service. The County will have to make similar arrangements with the private landholders.

The timing for requirements in the draft CAO that will require the County to obtain additional authorization from the Forest Service should be re-evaluated to take into account compliance by the County with federal law, such as the National Environmental Policy Act (NEPA). For example, if the County must install portable human waste collection devices off the Rubicon Trail and on National Forest System lands, this will require a special use permit from the Forest Service.

Some of the requirements of the draft CAO set deadlines for requirements that have not been clearly identified in the draft CAO. For example, there is a September 30, 2010, deadline for the County to submit a report showing that installation of bridges at the Ellis Creek and the Gerle Creek crossings has been completed. Yet, the draft CAO does not specifically require bridges installed at those locations. The draft CAO states "Take all reasonable steps to cease the discharge of sediment and other wastes....to waters of the state, including Gerle Creek, Ellis Creek, Loon Lake and its tributaries...." (p 6, No 1) and that the O&M plan includes "operating procedures for constructing and maintaining stream crossing..." (p 6, No 3(e)). If the Water Board intends to issue a CAO that requires construction of bridges or trails at particular locations, the CAO should clearly state that and specifically identify the location(s). Otherwise, it should revise the language in p 7, No 7 to allow El Dorado County to determine the most appropriate means to address the concerns. Finally, if the Water Board does intend to issue a CAO directing construction of specific structures and improvements outside the boundaries of

the Rubicon Trail itself and on National Forest System lands, the CAO's timeframes for compliance should take into account the additional time needed by the County to apply for and obtain Forest Service authorization.

The Forest Service recommends the following additional clarifications:

- P 6, No 2 of the Order requires that a vehicle use reduction plan address vehicle use during wet weather conditions, but does not explain or define, for purposes of the Order, what is meant by "wet weather conditions." For example, does it mean the wet weather period? Does it include summer thunder storms? What are the timing parameters of the wet weather period based upon? Is the wet weather period a specific time period? Is the wet weather period depending not on the time of the year but on road condition? When does the wet weather period begin? When does it end?
- What is the relation between p 6, No's 2 and 3 of the Order? Is a vehicle reduction plan a separate requirement or is it an element of the O&M plan?
- It is not clear in the draft CAO whether each element in the O&M plan has its own timeline.
- P 6, No 3(a) of the Order requires the identification of sensitive water bodies, but does not provide a definition for "sensitive water bodies." Nor does it provide any standards for what constitutes "protection."
- The issue meant to be addressed by "appropriate signage" on p 6, No 3(c) of the Order is unclear. Additionally, the effectiveness of the use of signs is questionable. To date, signs identifying the Rubicon Trail have been removed by the public.
- P 7, No 3(h) states the need to develop procedures for training of volunteer groups. We concur, and recommend that training procedures be developed in collaboration with the County, the Forest, and the many volunteers whose dedicated efforts have been instrumental in reducing the impacts of the Rubicon Trail.

We look forward to working with both the Water Board and the County to ensure that the County develops the necessary plans or other measures to address its management of the Rubicon Trail. Thank you for the opportunity to provide comment to the draft CAO regarding the County's management of the Rubicon Trail.

Sincerely,

/s/ Jeffrey Vail
JEFFREY VAIL
Acting Forest Supervisor

